

Appl. No. 10/779,308
Amdt. Dated 07/04/05
Reply to Office Action of 04/04/05

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application. The examiner has rejected claims 1-12 under 35 U.S.C. §§ 102(b) and 103(a) as being unpatentable over U.S. Patent No. 5,884,271 to Pitroda in view of the U.S. Patent No. 5,192,947 to Neustein. In order to establish a prima facie case of obviousness under 35 U.S.C. § 103 (a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

Applicant's amended independent claims 1, 6 and 10 specifically require the housing to include pivotally connected first and second sections for allowing a user to access data stored in the card. Pitroda fails to disclose such a structural arrangement because it employs one section rather than a pair of pivotally connected sections, (See Pitroda col. 9, lines 49-63). Pitroda teaches away from the claimed invention because it is intended to be used in a manner similar to a credit card, driver's license, or ATM card, wherein a magnetic strip may be passed along an electronic reader at point-of-sale (POS) (See Pitroda col. 2, lines 27-40). If Pitroda employs pivotally connected first and second members, as required by applicant's claimed invention, the intended function of swiping Pitroda's UET card would be defeated (See Pitroda col. 10, lines 4-25).

Although, Neustein teaches a Credit Card Pager Apparatus that has hingedly attached first and second housing sections, a person of ordinary skill in the art would not find it obvious to combine such a hinged structural cover with Pitroda's design because Pitroda already uses a plastic cover/case 15 to protect its on/off button 12 (see FIG. 1). Therefore, the threat of "interpreting random bumps as unauthorized access attempts", as suggested by the examiner, is not relevant because Pitroda must be turned on prior to operating (see FIG. 29). Neustein's "displays and switches" are not similar to those taught by Pitroda, as suggested by the examiner.

Moreover, because Neustein functions as a pager, it can be automatically activated

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without depressing an on/off, unlike Pitroda. Such automatic activation necessitates the need to provide hingedly attached first and second housing sections. Pitroda simply has no need for such hingedly attached housing sections because it already teaches a plastic cover 15 for protect its switches. Furthermore, adding hingedly attached housing sections to Pitroda would make its device more bulky and costly to manufacture. That a prior art reference could be modified to form the claimed structure does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

Applicant's amended independent claims 6 and 10 now positively recite:

--means for wirelessly communicating directly with a third party to verify data displayed on said display panel, said wireless communicating means including a transceiver for receiving an input signal from a user and transmitting a corresponding output signal to a vendor accessing a select one of a plurality of banking accounts--

Such proposed claim modifications do not introduce new subject matter nor do they raise new issues for consideration because they merely restate the currently claimed functions of the present invention in means-plus-function language.

Applicant respectfully submits independent claims 6 and 10 now positively recite the intended function of wirelessly communicating directly with a third party vendor. Applicant respectfully requests patentable weight be given to such claim language in view of Pitroda limitations. In particular, the UET card of Pitroda does not disclose the capability to communicate directly with a third party or vendor (emphasis added) using a wireless communication means, as recited in Applicant's amended claims 6 and 10. Pitroda discloses the capability of its UET card to communicate via a radio frequency based wireless system, however, such communication must occur between the UET card 20 and the CIU 21 (communication interface unit) not directly with a third party's or vendor's computer (See Pitroda FIG. 2 and col. 10, lines 4-25, emphasis added). In Pitroda, a vendor does not communicate with the UET card directly. Rather a vendor

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communicates with the CIU (See Pitroda FIG. 2), which communicates the unique number for each UET card to the vendor. Therefore, applicant submits Pitroda does not teach all of applicant's claims.

Applicant has further amended independent claim 10, as proposed in the previous amendment filed on 1/13/2005. Such claim amendments are neither taught nor made obvious by the prior art of record.

In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable with respect to the above arguments and amended independent claims 1, 6 and 10. Should the examiner consider necessary or desirable to make formal changes anywhere in the specification, claims and/or drawings, then it is respectfully asked that such changes be made by examiner's Amendment, if the examiner feels this would facilitate passage of the case to issuance. Alternatively, should the examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned attorney.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
Law Office of Ashkan Najafi, P.A.

By _____


Ashkan Najafi, Esq.
Reg. No. 49,078
Customer No. 34,356

6817 Southpoint Parkway
Suite 2301
Jacksonville, FL 32216
Telephone: 904-296-0055
Facsimile: 904-296-0056
patentattorney@patent-usa.com